IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 17TH JULY 2007 / 26TH ASHADHA 1929

MFA.No. 777 of 2002()

WCC.136/2000 of WORKMEN'S COMPENSATION COURT, THRISSUR

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APPELLANT: APPELLANT/2ND OPP.PARTY.

NATIONAL INSURANCE COMPANY LTD.,
AMBIKA ARCADE, P.B.NO.89,
M.G. ROAD, THRISSUR.

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENTS: RESPONDENTS/APPLICANT AND OPP. PARTY-1.

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1. JOE, S/O. THOBBIAS, THERATTIL HOUSE,
POST KARUMBILAVU, THRISSUR.

2. A. VIDYASAGAR, S/O. LATE K.K. MENON,
ALLATH HOUSE, POST ANTHIKKAD, THRISSUR.

BY ADV. SRI.P.GOPALAKRISHNA MENON
SRI.M.JITHESH MENON

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 17/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No. 777 of 2002

Dated this the 17th July, 2007.

J U D G M E N T

The National Insurance Company Ltd., who is the second opposite party, in W.C.C.No.136/2000, on the file of the Commissioner for Workmen's Compensation Court, Thrissur, is the appellant. The first respondent filed a petition under Section 22 of the Workmen's Compensation Act claiming compensation. It was averred that he was employed as a driver of the bus bearing Registration No.KL-8/C-5885, owned by the second respondent. It is averred that on 3.4.2000, while he was driving the bus, it hit against a lorry, and the accident took place, in which, he sustained injuries. It was contented that he was earning an income of Rs.2000/= per month, he was 38 years of age, and, as such, he was entitled to get an amount of Rupees One Lakh as compensation. The injured alone contested the matter. The insurer denied the contention that there was employer-employee relationship between the first and second respondent. The averment that the first respondent sustained an employment injury was also disputed. The quantum of compensation claimed was also disputed. The first respondent produced a certificate issued by the

Doctor, in which, it was noted that he was having a disability of 4% . The Workmen's Compensation Court took a view that though the disability assessed by the Doctor was 4%, the loss of earning capacity in relation to the profession of a driver was 15%, and hence, the compensation is to be determined taking it as a case of 15% disability, and the compensation was awarded. The disability was assessed to 15% by the Deputy Labour Commissioner himself, after rejecting the application filed by the appellant for a direction to the first respondent to be examined by a medical board. Challenging that order, this appeal is filed.

2. The learned counsel appearing for the appellant has argued that it is a case in which the Deputy Labour Commissioner had shut out the evidence and acted according to his whims and fancies. It is argued that in **Vanajakshan v. Joseph** (2003 (2) KLT 462), a Full Bench of this Court has held that the disability shall not be limited to any particular work, it shall be taken in relation to all work, which is capable of performing. So, the view taken by the Deputy Labour Commissioner that since the disability of the first respondent, with reference to driver's profession is 15%, he is entitled to get a

compensation taking that figure as disability, is illegal and unsustainable. Further, the Workmen's Compensation Court itself re-fixed the disability without any basis.

3. Admittedly, the Doctor who examined the first respondent had fixed the disability to 4%. Without giving any proper reason, the court dismissed the application filed by the insurer to direct the first respondent to undergo examination by a medical board. It is very unfortunate that even in cases, where there is no clear and cogent materials to fix the disability, the Deputy Labour Commissioners are rejecting the request to subject the victim for a medical examination and take up the liability of fixing the percentage of disability according to their own whims and fancies. That practice is to be deprecated. It is made clear that in a proceedings of this nature, when there is no clear materials to fix the disability, the Deputy Labour Commissioners shall not take up the responsibility of fixing the liability, and the party shall be referred to the medical board for fixing up the liability. Therefore, I set aside that part of the order. I am of the view that it is only just and proper that the Deputy Labour Commissioner shall re-consider the matter again in accordance with law.

In the result, the appeal is allowed. The order impugned is set aside and the case is remanded. The Commissioner for Workmen's Compensation, Thrissur, is directed to take W.C.C.NO.136/2000 back to its file, and dispose of the same afresh, in accordance with law, after affording both sides an opportunity to adduce further evidence. If a request is made by either of the parties to refer the workman for an examination by a medical board, the Commissioner shall allow the same and get a report of the medical board also.

C.M.P.No.4568/2002 in M.F.A.No.777/2002 is dismissed.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No.777 of 2002

J U D G M E N T

Dated: 17th July, 2007.